IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1469 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5- No.

M R CHAUDHARI

Versus

DHANIBEN WD/O PRECHAND DECEA. THROUGH HER HEIRS

Appearance:

MR RN SHAH for Petitioner

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 10/04/96

ORAL JUDGEMENT

By this petition under Articles 226 and 227 of the Constitution of India, the petitioner, who is the original opponent No.1 in the proceedings of the Revision Application No.TEN.A.70 of 1971 before the Gujarat Revenue Tribunal,Ahmedabad, has challenged the legality and validity of the order dated 11th August, 1972

rendered in the aforesaid Revision Application by the Gujarat Revenue Tribunal. The petitioner has also challenged the notice dated 7.6.1978 at Annexure 'E' issued by the Circle Officer, Mahuva asking the petitioner to hand over the possession of the land in question to the respondent No.1 herein.

The facts and circumstances giving rise to the present petition may be stated shortly thus:-

The petitioner claims to be the tenant in respect of the part of survey No.331 admeasuring 2 Acres and 22 Gunthas of village Mahuwaria and in respect of part of survey No.245 admeasuring 0 Acre 17 gunthas of village Haladhava, Taluka Mahuva, District Surat. According to his case, he has been cultivating the said land at present and by the impugned notice at Annexure 'E' on basis of the impugned order of the Gujarat Revenue Tribunal at Annexure 'G', he is sought to be dispossessed from the aforesaid land. It is not in dispute that the father of the petitioner and the respondent No.2,Raghabhai Chaudhari, cultivated the aforesaid lands and the petitioner and the respondent No.2,Ichhubhai, are the heirs and legal representatives of deceased Raghabhai Chaudhari. Dhaniben, widow of Premabhai Kalabhai, who was the landlady, had filed a Tenancy Case No.4/69 before the Mamlatdar, Mahuva, for possession of the suit land on the ground that the petitioner and the respondent No.2 did not pay the rent and were in arrears of rent for three years i.e. from 1966 to 1969. Mamlatdar, Mahuva, by his judgment and order dated 15.5.1970, having considered the facts and documentary evidence on record, came to the conclusion that the notices served on the petitioner and the respondent no.2 were not valid and the applicant-landlady was not entitled to get possession of the land in question. The Mamlatdar, therefore, dismissed the said application for recovery of possession of the land. The Mamlatdar by the said order also directed the petitioner and his brother, the respondentNo.2, to pay up the arrears of rent for three years.

A tenancy appeal, being Tenancy Appeal No.3G.37/70, was preferred against the aforesaid judgment and order of the Mamlatdar, Mahuva. The Deputy Collector, Vyara, by his judgment and order dated 1st August 1970 dismissed the said appeal, confirming the above judgment of the Mamlatdar, Mahuva. The Deputy Collector, Vyara, while dismissing the appeal, recorded that there were separate tenancy rights of the petitioner and the respondent no.2 and the separate tenancy amounts were

also fixed therefor and as such the joint notice served on the petitioner and the respondent No.2 was not valid.

The matter was taken up before the Gujarat Revenue Tribunal by filing Revision Application No.TEN.A.70/71 by the respondent no.1 herein. The Tribunal allowed the appeal holding, inter alia, that the authorities below were not correct in holding that the tenancy was not terminated by valid notice. The Tribunal further held that even if there were separate tenancies held by the petitioner and the respondent No.2, notices were sufficient and valid. The Mamlatdar should have, therefore, according to the Tribunal, passed an order under sub-section (2) of section 25 of the Bombay Tenancy and Agricultural Lands Act, 1948 ('the Tenancy Act' for short). The Tribunal, therefore, set aside the judgments of the Mamlatdar, Mahuva and the Deputy Collector, Vyara.

It is an admitted position that the respondent No.2 had challenged the legality and validity of the aforesaid judgment of the Tribunal by filing Special Civil Application No.345/73 in this Court. This Court, by the judgment and order dated 21.1.1977, quashed and set aside the aforesaid order of the Gujarat Revenue Tribunal, at Annexure 'C', so far as it was against the respondent No.2. The aforesaid judgments and orders of the Mamlatdar, Mahuva and the Deputy Collector, Vyara, were restored.Rule was accordingly made absolute qua the respondent No.2. The petitioner having not challenged the order of the Tribunal in the High Court, the notice at Annexure 'E' dated 7.6.1978 was sought to be served for handing over the land in his possession to the heirs of respondent No.1. The respondent No.1 Dhaniben has expired on 11.8.1974.

Mr.R.N.Shah, learned Advocate appearing for the petitioner, contended that the petitioner came to know that he was likely tobe dispossessed of the land in his possession and therefore the petitioner had filed Regular Civil Suit No.79/78 in the Court of the Civil Judge (J.D.) at Bardoli. The petitioner could not file any writ petition challenging the order of the Gujarat Revenue Tribunal at Annexure 'C' because of his stringent financial condition. It may be that he was not properly advised in instituting the civil suit challenging the order of the Tribunal. The trial Court dismissed the said suit on 31.3.1979 holding that the Court had no jurisdiction to hear the suit.Mr.Shah, therefore, submits that the petitioner was taking action as he was advised for maintenance and possession of land that he

cultivated. In submission of Mr.Shah, the notice of the respondent No.1 being inherently invalid and on that count the claim for possession of the land in question of the respondent No.1 herein having been rejected right upto the High Court, cannot be said to be surviving merely because the petitioner could not file writ petition in this High Court against the judgment and order of the Tribunal because of the circumstances beyond his control. The High Court having interpreted section 40 of the Tenancy Act, has come to the conclusion that the heirs of deceased Raghabhai chaudhari were entitled to be in possession of the land in question. Therefore, simply because the petitioner did not challenge that order, he cannot be deprived of his right of being tenant in respect of the suit land.

Mr.N.A. Anjaria, appearing for the respondent No.1, having invited my attention to the operative part of the judgment rendered in Special Civil Application No.345/73 of the respondent No.2 herein, contended that the order of the Tribunal at Annexure 'C' was quashed so far as the respondent No.2 was concerned only and it cannot operate in case of the petitioner herein, as he had not challenged the order of the Tribunal at that time. Mr.Anjaria may be right technically. However, the notice which is invalid, as is held by the Mamlatdar, the Deputy Collector and also by the High Court, cannot become valid so as to enable the respondent No.1 to get the possession of the land in question.Section 40 of the Tenancy Act in so far as it is material, is in the following terms;-

"40.Continuance to tenancy on death of tenant.--(1) Where a tenant (other than a permanent tenant) dies, the landlord shall be deemed to have continued the tenancy on the same terms and conditions on which such tenant was holding it at the time of his death, to such heir or heirs of the deceased tenant as may be willing to continue the tenancy.

x x x x x x."

The original tenant, Raghabhai Chaudiari, had two sons--the petitioner herein and the respondent No.2,Ichhubhai. In view of the aforesaid provisions of section 40 of the Tenancy Act, the petitioner was willing to become the tenant of the land in question and in fact he was cultivating the said land during the time of the aforesaid proceedings. It is in terms provided in the

aforesaid provisions of section 40 of the Tenancy Act that the tenancy will be deemed to have been continued to such heir or heirs of the deceased as may be willing to continue the tenancy. Therefore, the only question before the Tribunal was whether the petitioner was willing to continue the tenancy in respect of the land in question or otherwise. Instead of that, the Tribunal applied an altogether different yardstick, namely, whether the landlady is willing to accept the petitioner as a tenant or not. The Tribunal thus clearly committed error in holding that the concurrent findings recorded by the Mamlatdar and the Deputy Collector that the petitioner was tenant in respect of the land which he was personally cultivating were wrong. Thus, the view taken by the Tribunal is an error apparent on the face of the record.

Mr.Shah, for the petitioner, also submitted that on death of Dhaniben on 11th August 1974 and after lapse of one year thereafter the petitioner has become a deemed purchaser. In view of section 31(2) of the Tenancy Act, the possession of the petitioner in respect of the land in question cannot be taken from the petitioner by virtue of the impugned notice at Annexure 'E'. Section 31 of the Tenancy Act provides in respect of the landlord's rights to terminate tenancy for personal cultivation and non-agricultural purpose.Relevant part of Section 31 reads as under:-

"31.Landlord's right to terminate tenancy for personal cultivation and non-agricultural purpose.-(1) Notwithstanding anything contained in section 14 and 30 but subject to the sections 31A to 31D (both inclusive, a landlord not being a landlord within the meaning of Chapter III-AA may after giving notice and making an application for possession as provided in sub-section (2), terminate the tenancy of any land (except a permanent tenancy), if the landlord bona fide requires the land for any of the following purposes--

(a) for cultivating personally,
(b) for any non agricultural purposes,

(2) The notice required to be given under sub-section (1) shall be in writing shall, state the purpose for which the landlord requires the land and shall be served on the tenant on or before the 31st day of December 1956. A copy of

such notice shall, at the same time, be sent to the Mamlatdar. An application for possession under section 29 shall be made to the Mamlatdar on or before the 31st day of March 1957.

x x x x x."

Thus, on plain reading of the aforesaid provisions of section 31 of the Tenancy Act, it is clear that the landlord cannot terminate the tenancy for arrears of rent. It was never the case of the respondent No.1-landlady that she wanted to cultivate the land personally or the land was required for non-agricultural purposes. In the facts of the case, I see substance in the submission of Mr.Shah that the petitioner has to be treated as deemed purchaser of the land in question.

In the above view of the matter, submission of Mr.Anjaria for the respondent No.1 that the findings and the decision rendered in Special Civil Application No.345/73 could not be made applicable qua the petitioner, has no substance.The legal position based on the same set of circumstances of the case as is applicable to the respondent no.2 herein would equally be applicable to the petitioner and it cannot be concluded that the position qua the respondent No.2 about invalidity of the notice would not be applicable in case of the petitioner. Apart that, the petitioner has challenged the decision of the Tribunal in this petition and it is liable to be quashed on the same line of reasons and legal position as per the judgment at Annexure 'D' rendered in Special Civil Application No.345/73.

In the above view of the matter, the judgment and order of the Tribunal in Revision Application No.TEN.A70/71 at Annexure 'C 'dated August 11,1972 and the notice at Annexure 'E 'dated 7.6.1978 are hereby quashed and set aside, so far as the petitioner is concerned. Rule is accordingly made absolute. There shall be no order as to costs.

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